IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 2036 OF 2006

Bharatiya Kamgar Sena .... Petitioner

versus

1. Vishwa Kalyan Kamgar Sanghatana)
Pune.)
)
2. Bajaj Auto Limited, Pune)..Respondents.

Shri M.D. Nagle for the petitioner.
Shri J.P.Cama Sr. counsel with Mrs. Swati Deshpande
i/b M/s. M.S. Bodhanwala & Co. for Respdt. no.2.

CORAM; V.G. PALSHIKAR &
V.R. KINGAONKAR, JJ.

DATED; 17TH APRIL, 2006.

JUDGMENT (Per Palshikar, J.):

1. By this petition, the petitioner has impugned the order passed by the Member, Industrial Court, Pune on 22-2-2006 below Exh. U-5 and C-4 on the ground mentioned in the petition and verbally canvassed before us.

2. The Petitioner no.1 Bharatiya Kamgar Sena is a union of employees working in Bajaj Auto Limited, Akurdi, Pune, who is respondent no.2 in the present case. Respondent no.1 is another trade union registered under the Trade Unions Act 1926, claiming to

be recognised union of employees of Bajaj Auto Limited in place of the petitioner, which already is such recognised union.

3. The Maharashtra Recognition of Trade Unions & Prevention of Unfair Labour Practices Act, 1971 (hereinafter referred to as the Act for the purposes of brevity) provides the manner in which such recognition can be granted. Respondent no.1 union filed an application in the year 2003 claiming recognition under the Act. This application is pending.

4. On 11-8-2005 another application is filed by the same respondent no.1 for the said purposes, which is registered as MRTU No.7 of 2005. In MRTU NO.7 of 2005 respondent no.1 filed an application on 6-1-2006 claiming that necessary direction be issued to the investigating officer functioning under the Act to scrutinise the membership in accordance with law and by physical verification of the members. This application was objected to by both the respondents. This application was marked as Exh. U-5. Another application also was pending in this very proceeding, which was Exh.C-4 and the learned Member of the Industrial Tribunal, Pune decided these two applications by the impugned order dated 22-2-2006. He, by the impugned order permitted the Investigating

Officer or directed the Investigating Officer to investigate the claim as provided by the Act and also permitted to enquire into the matter by taking recourse of physical verification also. In so far as verification as prescribed by the law is concerned, the petitioner does not have any objection. However, physical verification was objected to before the trial court and since the impugned order went against the petitioner, this petition is filed.

5. We have heard the learned counsel for the petitioner and the learned counsel for the respondent no.2. We have with their able assistance scrutinised and rescrutinised the provisions of the Act pertaining to grant of recognition. The submissions made in support of the petition stated very briefly are as under:

6. The provisions of the Act do not contemplate physical verification or vote by the members of the union seeking recognition. Secret Ballot also is not permissible and therefore the impugned order is bad. It is then contended that none of the provisions permitted such enquiry by physical verification and therefore the impugned order is bad. In support of these contentions, the provisions of the Act were relied upon and were considered by us. According to

the learned counsel prayer for physical verification of the membership is unsustainable in law, looking to the provisions of the Act. We will have to analyse therefore the same position to appreciate and adjudicate upon the contentions raised by the petitioner.

7. Chapter III of the Act provides for recognition of unions. Section 10 specifies the undertaking to which Chapter III is applicable. Section 11 provides for application for recognition of union. Heavy reliance is placed on this provision. Section 12 provides for recognition of the union and gives the procedure according to which this recognition is to be enquired into or examined. Then section 13 provides for cancellation of recognition and suspension of rights of the recognised union. We are however, not concerned with section 13. Section 14 then deals with recognition of other union. It provides for the time within which the application can be made and provide for registration by making such application. Reliance is placed in the above submission on the provision of section 14 also. Section 15 provides for re-recognition of unions which are derecognised under section 13 of the Act. We are not concerned with this provision. Then section 19 which finds place in Chapter IV of the Act provides for obligation of the

recognised union. Section 20 spells of the right of the recognised union. We are not concerned in this petition with the rest of the provisions in the Chapter.

8. Factually these provisions have been considered at length by the Supreme Court of India in various judgments on which reliance is placed by the learned advocates appearing before us. In each of these judgment delivered by the Supreme Court of India, the provisions have been considered. We may deal with the contentions and the judgments relied upon by the Supreme Court after analysing the provisions once again.

9. Section 11 reads thus:

11. Application for recognition of Union:

(1) A union (hereinafter referred to as the "applicant-union") which has for the whole of the period of six calender months immediately proceeding the calendar month in which it so applies *under this section a membership of not less than thirty percent of the total number of employees employed in any undertaking may apply in the prescribed form*

to the Industrial Court for being registered as a recognised union for such undertaking.

(2) Every such application shall be disposed of by the Industrial Court as far as possible within three months from the date of receipt of the application, where a group of concerns in any industry which is notified to be one undertaking for which recognition is applied for is situated in the same local area; and in any other case, within four months.

10. From the above, it will be clear that an application can be made by any union which has 30% of membership of the total number of employees employed in the undertaking, in this case namely, Bajaj Auto Limited and the membership should be of 30% or more in the whole period of six months prior to the date on which the application is made. Sub section (2) provides that such application shall be decided by the Industrial Court as far as possible within three months. After such application is made the claim of the applicant union is to be scrutinised or verified as provided by the Act. Section 12 of the Act provides the manner in which such enquiry can be undertaken or such verification or scrutiny is to be carried out. It is prescribed by the section that the Industrial Court

before whom the application is made under section 11 shall see that prescribed fees are paid and the application on a preliminary scrutiny seems to be in order. If it so finds then the Industrial court can cause notice to be displayed on the notice board of the undertaking, specifying in the notice the contents of the application and calling upon other union or unions if any existing in the same company and asking them to show cause why recognition should not be granted to the applicant union. The preliminary scrutiny as contemplated by section 12(1) is therefore to see whether prescribed fees are paid or not and whether the application is in order or not. For the purpose of such preliminary enquiry section 19 can be seen, which provides the obligation. It is stipulated that rules, the union seeking recognition under the Act, shall provide with the matters mentioned therein. This has to be disclosed from the application for recognition. If these objectives are there in the rules, then primafacie the application is in order and a notice under section 12(1) is liable to be issued. Section 19 nowhere provides for any manner of conducting the enquiry.

11. Sub section (2) of section 12 provides the manner in which the objections are to be dealt with. It provides that if after holding such enquiry in the

matter as it deems fit, the Industrial Court comes to the conclusion that the conditions requisite for registration specified in section 11 are satisfied and and the applicant union also complies the conditions specified in section 19 of the Act, then the Industrial court shall issue a certificate or registration. It is therefore to be seen that the section specifically empowers the Industrial court to hold such enquiry as it deems fit. In our opinion, it can therefore direct the holding of such enquiry through investigating officer asking him to make physical verification of the registers for the period of six months preceding the date of application and verified by questioning the members of the applicant union as to whether they were factually members of the applicant union for all the six months preceding the date of application. Such enquiry will have to be made because the union seeking recognition may claim by entering the names into the register of several employees who are factually not the members of the union and if recognition is to be granted entering the names of the persons in the register of the applicant union. The purpose of scrutiny can conveniently be defeated in several cases. What is required by section 11 is existence of 30% or more membership of the employees of the undertaking where the union seeks recognition and it has to be reflected in the registers of the applicant union. The

register of the applicant union is filled by its office bearers. They may show the names of 35% of the employees of the union as its member for a period of last six months and the register would also reflect payment of subscription fee of the union by all these persons for all that period. If the Industrial court or its investigating officer is prohibited from taking any further enquiry to verify this, the very purpose of giving time to the Industrial court to recognise the union would be frustrated and on the basis of verifying the claim the applicant union will succeed in getting recognition when factually it does not deserve one. It is with this intention that the legislature has framed section 12(2) of the Act which provides the power to the Industrial court to hold such enquiry into the matter as the court deems fit. There is nothing therefore either in section 11 or section 12 which specifically prohibits such verification by queries to the employees whose names find place in the registry of the applicant union. What has been prohibited and which prohibition is upheld by the Supreme Court is holding of secret ballot for the purposes of ascertaining whether they are factually members of that union or not. We will advert the judgment of the Supreme Court of India hereafter.

12. The first judgment relied upon by the learned

advocate is in the matter of **Automobile Products of India Employees' Union Vs. Association of Engineering Workers, Bombay and others, reported in Civil Law Reporter S.C. Volume II at page 344.** In this case the Supreme Court of India has observed that method of determination as to which of rival unions entitled to registration, user of ballot as a method being alien to the Act, cannot be permitted. There ballot was used as a method to find out the affiliation of all the employees of the undertaking to either of the rival or contending unions, and this was done with the consent of both the unions. The Supreme Court after examining the entire provisions of the Act pertaining to recognition observed in para 19 as under:

> *19. As regards the membership qualification itself, the Act enjoins that for being recognised, the applicant-union must have firstly a membership of a minimum of 30 per cent of the employees of the undertaking for the whole of the period of at least six calendar months preceding the month in which the application for recognition is made. When the applicant-union seeks recognition for itself by displacing the existing recognised union, the applicant-union has, in addition, to satisfy that not only it had 30*

percent of the membership during the six calendar months immediately preceding the calendar month in which it made its application, but had also a larger membership during the said period than the membership of the recognised union. Even with regard to membership, therefore, what has to be satisfied by the concerned union is not only its minimum qualifying membership but also its competing superiority in it over a continuous specified period. What should further be not lost sight of is the paramount fact that it is the membership of the workmen of the union over a period vouched by the relevant documents and not their vote on a particular day which under the Act gives the Union its representative character. *It* is *its representative character determined by such membership that gives a union a right to make the application for recognition. However, overwhelming therefore the vote may be in its favour in a ballot, it will not entitle a union to recognition under the Act.* The recognition by ballot or by any method other than that laid down in the Act, *is therefore, alien to the Act." (emphasis applying)*

13. It will be seen that the Supreme Court has specifically laid down that the recognition to be determined by ballot or any method other than that is laid down in the Act and is therefore alien to the Act. It is also observed by the Supreme Court that the fact of paramount consideration is membership of the workmen of the union over a period of six months vouched by the relevant documents and not their vote on a particular day. The Supreme Court has nowhere laid down in this judgment that the enquiry by the investigating officer from the employees as to whether they factually belong to the applicant union for last six months or not is alien to the act. Such enquiry will dispose of any doubt which the investigating officer or the Industrial court may have regarding the correctness of the relevant documents. The fact as to whether 30% or more are also to be ascertained by asking the member employee as to the length of time during which he is member of the applicant union or he may be asked to say yes or no to the question as to whether he is member of the applicant union for the last six months or more. Such physical verification is not and, in our opinion, cannot be held alien to the Act, The purpose for which it was enacted was basic requirement of investigation into the claim of union having 30% or more number of employees as its members for last six months.

Ascertaining factual correctness of the entries made in the documents or register of the union by enquiring from the members employees, cannot therefore, in our opinion, be alien to the purposes of the Act.

14. From para 20 of the judgment of the Supreme Court, it will be clear that vote was to be taken of all the employees of both the unions to determine as to which of the union has more members than the other. To permit such method is according to the Supreme Court, alien to the purpose of the Act. In the instant case, the physical verification has to be done of the employees who, according to the applicant union, are its members for a period of more than six months before the date of application. In our opinion, therefore, the dicta of the Supreme Court in this case cannot apply to the facts of the present case as firstly the method of vote by ballot is not resorted to and secondly even voting in any manner is not to be conducted. All that has been directed is physical verification of the members. In the circumstances, it cannot be said that the impugned order in any manner violates the dicta of the Supreme Court in its judgment.

15. Then the judgment of the Supreme Court in case of **Association of Engineering Workers Vs. Dockyard Labour**

Union and others reported in 1995 S.C.C. (L & S) 137, where the Supreme Court observed that even if the method of secret ballot is resorted to with the consent of the parties, it cannot be permitted taking into consideration the scheme of the Act. There the Supreme Court has held that even with such consent parties cannot be allowed to cure the illegality by substituting a procedure not prescribed by the Act. According to the Supreme Court in this judgment the procedure of secret ballot is not provided by the Act and therefore cannot be resorted to. The Supreme Court then relied on its earlier judgment cited above. It is pertinent to note that this judgement is delivered by a Bench of three Judges before whom the correctness of the earlier judgment was questioned and the Supreme Court proceeded to affirm the view taken in the earlier case. There also the question was of resorting to ballot by consent of parties. We have already pointed out how the physical verification permitted by the Industrial court is not by holding a ballot or taking voting in any manner. It is not resorted to in relation to all the employees of the undertaking but is to be made in relation to persons whom the applicant union claims to its members. The Supreme Court has also noted in this judgment that the Industrial court after considering the objections, if any, and after holding such enquiry into the matter, as it deems fit

should come to the conclusion for granting the application under section 11 of the Act. The permission of holding such enquiry as it deems fit would be redundant even if an enquiry to ascertain whether the entries made in the register of union is correct or truthful or not. Infact permitting such enquiry would be furthering the objects of the Act. In our opinion, therefore this judgment is also of no assistance to the petitioner.

16. Reliance was then placed on yet another judgment of the Supreme court in **Association of Chemical Workers Vs. S.D.Rane and others reported in 1996 II CLR page 214**. There the Supreme court was basically considering the extent of section 14 of the Act. In this case also the Supreme Court observed that even if the parties consented to identify the number of employees in the company by secret ballot, that method was not quite warranted. There is therefore, no question of this judgment furthering the contentions raised by the petitioner in any manner. Except all these judgments, no other cases were cited.

17. That takes us to the second submission or contention raised on behalf of the petitioner. The contention is that the application filed in the year 2003 was pending and therefore the second application

of the year 2005 should not be entertained by the Industrial court. Reliance was placed on section 10 of the Civil Procedure Code and scrutiny of the Act will show that the act nowhere makes applicable the provisions of the CPC to the proceedings under the Act. Apart from that all that is required by section 10 is staying of the subsequently instituted suit, and nothing prevented the petitioner from making an application for applying for staying the later case by recourse to section 10. The petitioner has failed to do so. There is therefore no substance in the submission that section 10 prohibits the Industrial court from entertaining second application. In fact perusal of the section 14 of the Act would demonstrate that second application for the same purpose of recognition under section 11 is statutorily permissible after certain period mentioned therein is over.

18. There is yet another aspect which in our opinion is of importance and needs consideration. We already observed above that section 12 empowers the Industrial court to hold such enquiry in the matter as it deems fit. Such enquiry as the Industrial court deems fit in the matter of granting recognition under section 11 of the Act is therefore clearly a power given to the Industrial court. Section 8 of the Act provides for appointment of investigating officer to assist the

Industrial court and Labour court. Section 9 spells out the duties of the investigating officer. Sub section (2) in very clear terms says that it shall be the duty of the investigating officer to assist the Industrial court in the matter of verification of membership of union. If the provisions of section 12 and 9 are read conjointly, the power to hold such enquiry as it deems fit vested in the Industrial court, can be exercised by it by directing investigating officer under section 9(2) to verify the membership of the unions as required for fulfilment of the requirement of section 11 of the Act. All that has been laid down by the Supreme Court was this verification of membership of unions cannot be undertaken by secret ballot or by other mode of voting amongst the employees of the undertaking in which recognition is sought by the applicant union and is opposed by the existing union. The statue itself therefore contemplate verification of membership of unions. This verification can be undertaken by scrutiny of the records, registers, entry, books etc. and also by verifying the factual existence thereof by questioning the persons, which applicant union claims to be its member.

19. That takes us to the last submission of the petitioner that according to the learned counsel the

second application could not be entertained during the pendency of the first application. Proviso to section 14 reads thus:

> *" Provided that, the Industrial court may not entertain any application for registration of a union, unless a period of one year has elapsed since the date of disposal of the previous application of that union."*

Firstly the proviso says that the Industrial court may not entertained. There is no positive embargo therefore saying that the Industrial court shall not entertained. Apart from that factually in this case this objection cannot be sustained at all because respondent no.2 has admittedly given up the claim as made by the earlier application. Apart from that filing of second application in view of proviso quoted above cannot be considered to be completely barred. In this case during the pendency of the first application of the year 2003, elections have been taken place in May 2005 and thereafter this application has made. The circumstances which existed in the year 2003 therefore substantially changed by holding of fresh elections in May 2005. It cannot therefore be said that second

application is liable to be rejected solely on the ground that first is done. Viewed from any point therefore this submission also did not and is liable to be rejected.

20. Yet another provision of the act has to be looked into to negate the contention of the petitioner that second application for recognition under section 11 cannot be passed during the pendency of the first application, as provided by the proviso to section 14. Sub section (2) of section 11 provides that every such application under section 11 shall be disposed of by the Industrial court as far as possible within three months from the date of receipt of the application where a group of concerns in any industry which is notified to be one undertaking for which recognition is applied for is situated in the same local area, and in any other case within four months. In the instant case, the application made in the year 2003 was statutorily required to be decided and disposed of by the Industrial court within four months from the presentation of the application. That period prescribed by section 11(2) of the Act was therefore over in any event in the year 2004. Consequently entertaining the application in the year 2005 cannot be objected to with reference to proviso to section 15. Except this, no other contentions were raised. For

reasons already recorded, we are unable to accept any of them and the petition therefore fails and is accordingly dismissed with costs quantified at Rs. 5,000/- to be paid by each respondent to the petitioner. Petition accordingly dismissed.

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